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Paper No. 10

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MAILED

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OFFICE OF PETITIONS

In re Patent No. 5,970,656 :
Issued: October 26, 1999 :
Application No. 09/152,458 :
Filed: September 14, 1998 :
For: HOUSING ASSEMBLY WITH :
BEVELED RETAINERS FOR :
INSTALLATION IN A WINDOW :
FRAME :
:

ON PETITION

This is in response to the petition under 37 CFR 1.378(b), filed February 21, 2012, to accept the unavoidably delayed payment of the maintenance fee for the above-identified patent.

The patent issued October 26, 1999. The 11.5 year maintenance fee could have been paid from October 26, 2010 through April 26, 2011, or with a surcharge during the period from April 27, 2011 through October 26, 2011. Accordingly, the patent expired October 27, 2011, for failure to timely submit the 11.5 year maintenance fee.

The Director may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee. 37 CFR 1.378(a).

A grantable petition to accept a **unavoidably** delayed maintenance fee payment under 37 CFR 1.378(b) must include the following: (1) the required maintenance fee set forth in § 1.20(e) through (g) (currently \$2,365.00 for a small entity); (2) the surcharge set forth in § 1.20(i)(1) (currently \$700); and (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the

maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Initially, the Office notes that on April 13, 2012, patentee submitted the present "PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b) (Form PTO/SB/65). However, patentee indicated on the form the fees being submitted as \$1,240.00 for the 7.5 year maintenance fee and \$1,640.00 for the surcharge fee. Patentee is advised that the 7.5 year maintenance fee in the amount of \$1,150.00 was previously paid on March 28, 2007. Therefore, the patent is expired for failing to pay the 11.5 year maintenance fee, currently \$2,365.00. Additionally, the surcharge fee of \$1,640.00 is the amount due when the late payment is UNINTENTIONALLY delayed (the surcharge fee for unavoidable delay is \$700.00). Therefore, it is unclear whether patentee intended to file a petition under 37 CFR 1.378(c) to accept the UNINTENTIONALLY delayed maintenance fee payment or a petition under 37 CFR 1.378(b) to accept the UNAVOIDABLY delayed maintenance fee payment.

Moreover, with the present petition, patentee submitted a credit card authorization form authorizing the Office to charge his credit card in the amount of \$2,880.00 for a different patent (Patent No. 6,604,324). Patentee did not provide a credit card authorization form for the required maintenance fee and surcharge in the appropriate amounts for this patent (Patent No. 5,970,656). The Office notes that the maintenance fee, as well as the required surcharge, must be paid as a condition for accepting the late maintenance fee on petition. As patentee did not submit any fees with this petition, the Office is unable to treat the present petition on the merits. Thus, the petition is dismissed.

Patentee is given TWO MONTHS from the mail date of this communication to file a petition under 37 CFR 1.378(b) or (c), accompanied by the 11.5 years maintenance fee in the amount of \$2,365.00 and the appropriate surcharge for late payment.

Patentee may wish to consider submitting a petition under 37 CFR 1.378(c), stating that the failure to timely remit the maintenance fee was unintentional instead of filing a petition under 37 CFR 1.378(b). Any petition to accept an **unintentionally** delayed payment of a maintenance fee must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include: (1) the required maintenance fee set forth in § 1.20 (e) through (g) (currently \$2,365.00 for a small entity); (2) the surcharge set forth in § 1.20(i)(2) (currently \$1,640.00); and (3) a statement that the delay in payment of the maintenance fee was unintentional. A copy the form for filing a PETITION TO ACCEPT UNITENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c) (Form PTO/SB/66) is enclosed for patentee's convenience.

It is noted that the address given on the petition differs from the address of record. However, the file does not indicate a change of address has been submitted. If appropriate, a change of address should be filed. As a one-time courtesy, a copy of this decision is being mailed to the address given on the petition. Thereafter, the Office will mail all future correspondence solely to the

address of record. Enclosed please find Form PTO/SB/123 which may be used to effect a proper change in correspondence address before the Office.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The patent file is being forwarded to Files Repository.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

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Enclosures: Forms PTO/SB/66 and PTO/SB/123

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